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**BY ECF**

October 10, 2013

The Honorable Denise L. Cote  
United States District Judge  
500 Pearl Street, Room 1610  
New York, NY 10007-1312

Re: *FHFA v. Merrill Lynch & Co., Inc.*, 1-11 Civ. 6202 (DLC); *FHFA v. JPMorgan Chase & Co.*, 1-11 Civ. 6188 (DLC); *FHFA v. HSBC North America Holdings, Inc.*, 1-11 Civ. 6189 (DLC); *FHFA v. Barclays Bank PLC*, 1-11 Civ. 6190 (DLC); *FHFA v. Deutsche Bank AG*, 1-11 Civ. 6192 (DLC); *FHFA v. First Horizon National Corporation*, 1-11 Civ. 6193 (DLC); *FHFA v. Bank of America Corporation*, 1-11 Civ. 6195 (DLC); *FHFA v. Goldman, Sachs and Co.*, 1-11 Civ. 6198 (DLC); *FHFA v. Credit Suisse Holdings (USA), Inc.*, 1-11 Civ. 6200 (DLC); *FHFA v. Nomura Holding America, Inc.*, 1-11 Civ. 6201 (DLC); *FHFA v. SG Americas, Inc.*, 1-11 Civ. 6203 (DLC); *FHFA v. Morgan Stanley*, 1-11 Civ. 6739 (DLC); *FHFA v. Ally Financial, Inc.*, 1-11 Civ. 7010 (DLC)

Dear Judge Cote:

We write in response to FHFA's letter to the Court of October 4, 2013 identifying certain inaccuracies in representations by its counsel that the loans the GSEs purchased through their flow channels were underwritten exclusively to GSE guidelines, rather than to originator guidelines. *See* May 20, 2013 FHFA Opp. to Defs' Knowledge Brief 14-15; Feb. 13, 2013 Ltr. from FHFA; Tr. of Feb. 14, 2013 Hr'g 60; Tr. of Feb. 21, 2013 Hr'g 66-67.

FHFA's admission that the GSEs purchased loans through their flow channels that were underwritten to originator guidelines confirms that FHFA has not produced important evidence concerning, among other things, the GSEs' contemporaneous assessments of the credit risks of loans originated to lenders' guidelines and the GSEs' post-purchase assessments through their quality control processes of the extent to which the loans they purchased complied with lender guidelines. The extent of this not-yet-produced evidence remains unclear at this point. Defendants' review of the record available to them to date, however, calls into question the accuracy of FHFA's assertions that, among other things, "the loans purchased by the GSEs' Single Family businesses on a flow basis . . . are properly regarded as having been originated pursuant to Fannie Mae's or Freddie Mac's guidelines." Oct. 4 Ltr. at 2.

Defendants will meet and confer with FHFA regarding this issue, and will review the report promised by FHFA's counsel regarding additional variances and waivers relating to Countrywide and other lenders, and related information. Depending on what is learned, we

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anticipate that additional discovery regarding the extent and nature of the GSEs' purchases of loans underwritten to lender guidelines and the GSEs' assessments of the risks and defects potentially associated with such loans and guidelines may be appropriate.

Respectfully submitted,

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